

GARRY L. MONTANARI, State Bar No. 89790
WESLEY S. WENIG, State Bar No. 162351
MICHAELIS, MONTANARI & JOHNSON, P.C.
4333 Park Terrace Dr. #110
Westlake Village, CA 91361
Telephone No.: (818) 865-0444

Attorneys for Defendants,
COUNTY OF ORANGE, GLEN LOCKERBY,
HARMON WARD, BRIAN BRUNS and
PHIL MEJIA

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MELVIN ANTHONY, JR.,

Plaintiff,

vs.

OFFICER GLEN LOCKERBY;
COUNTY OF ORANGE; OFFICER
HARMON WARD; OFFICER
BRIAN BRUNS; OFFICER PHIL
MEJIA; CARLTON P. BIGGS; and
ANDRÉ MANSSOURIAN,

Defendants.

Case No.: SA12-01702-SJO(SH)
Honorable S. James Otero

**NOTICE OF MOTION AND
MOTION TO DISMISS FIRST
AMENDED COMPLAINT
PURSUANT TO FED.R.CIV.P.
12(b)(6); MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: December 10, 2012

Time: 10:00 a.m.

Courtroom: 1

Complaint Filed: October 3, 2012

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 10, 2012 at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 1 of the above-entitled court located at 312 North Spring Street, Los Angeles, California 90012, defendants, COUNTY OF ORANGE, GLEN LOCKERBY, HARMON WARD, BRIAN BRUNS and PHIL MEJIA, will and hereby do move the Court for an order dismissing them from plaintiff MELVIN ANTHONY, JR.'s first amended complaint on file herein pursuant to Fed.R.Civ.P. 12(b)(6) on the grounds that plaintiff's complaint fails to state a claim upon which relief can be granted for the following reasons:

- 1 1. The conduct alleged against each individual Sheriff's deputy defendant
- 2 is not sufficient to state a constitutional violation under color of law; and
- 3 2. Plaintiff fails to state sufficient facts to support liability as to the
- 4 COUNTY OF ORANGE for the alleged constitutional violations of its
- 5 employees as required under the case of *Monell v. New York Department*
- 6 of *Social Services* 436 U.S. 658 (1978).

7 This motion is being brought following the attempted conference between
8 counsel for the moving parties and plaintiff pursuant to Central District Local Rule
9 7-3 which took place on or about October 18, 2012 and November 5, 2012.

10 This motion is based upon this Notice of Motion, the attached Memorandum
11 of Points and Authorities, all files and records in this action, and upon such further
12 matters as may be presented at the hearing on this motion.

13
14 DATED: November 7, 2012

MICHAELIS, MONTANARI & JOHNSON

15
16 By: 

WESLEY S. WENIG
Attorneys for Defendants,
COUNTY OF ORANGE,
GLEN LOCKERBY,
HARMON WARD,
BRIAN BRUNS and
PHIL MEJIA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MELVIN ANTHONY, JR.'s complaint alleges federal causes of
4 action for an alleged deprivation of rights under 42 U.S.C. section 1983 against the
5 COUNTY OF ORANGE and four individual COUNTY OF ORANGE Sheriff's
6 deputies, GLEN LOCKERBY, HARMON WARD, BRIAN BRUNS and PHIL
7 MEJIA, arising out of an incident which occurred at John Wayne Airport on June 15,
8 2012. (First Amended Complaint, allegations under "Parties" and "Statement of
9 Facts".)

10 Plaintiff alleges that upon arrival at John Wayne Airport, after having been
11 dropped off by his wife, Anny V. Anthony, he noticed an Orange County Sheriff's
12 deputy talking to Anny and requesting her driver's license. Plaintiff then returned to
13 the car to intervene and interfere with the Sheriff's deputy. (First Amended
14 Complaint, "Statement of Facts" 1-19.) After continued interference, the Sheriff's
15 deputy requested assistance from additional officers, who thereafter appeared at the
16 scene. After continued defiance and interference with the officers, plaintiff was
17 arrested. (First Amended Complaint, "Statement of Facts" 1-23.)

18 **II. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED**

19 **FOR FAILURE TO STATE A CLAIM UPON**

20 **WHICH RELIEF CAN BE GRANTED**

21 This motion to dismiss is being brought pursuant to Fed.R.Civ.P. 12(b) which
22 states, in pertinent part, as follows:

23 "Every defense to a claim for relief in any pleading must be
24 asserted in the responsive pleading if one is required. But
25 a party may assert the following defenses by motion:

26 . . .

27 (6) Failure to state a claim upon which relief can be
28 granted;

1 ...

2 A motion asserting any of these defenses must be made
3 before pleading if a responsive pleading is allowed.”

4 The counts in plaintiff’s complaint all arise out of an alleged 42 U.S.C. section
5 1983 claim for false arrest. Defendants contend that plaintiff’s complaint fails to state
6 any claim upon which relief can be granted against them because the conduct alleged
7 against each individual Sheriff’s deputy defendant is not sufficient to state a
8 constitutional violation under color of law and, separately, the allegations do not
9 support liability as to the COUNTY OF ORANGE for the alleged conduct of its
10 employees under *Monell v. New York Department of Social Services* 436 U.S. 658
11 (1978).

12 **III. PLAINTIFF HAS NOT PLED A CONSTITUTIONAL**
13 **VIOLATION UNDER 42 U.S.C. SECTION 1983**

14 To prove a violation of 42 U.S.C. section 1983, plaintiff must demonstrate that
15 the individual defendants, in this case the Sheriff’s deputies employed by the
16 COUNTY OF ORANGE, (1) deprived him of a right secured by the Constitution, and
17 (2) acted under color of state law. Further, to prevail on a section 1983 claim for false
18 arrest, a plaintiff has to demonstrate that the arrest was made without probable cause
19 or other legally sufficient justification. *Dubner v. City and County of San Francisco*
20 266 F.3d 959, 964 (9th Cir. 2001). “Probable cause exists when, under the totality of
21 the circumstances known to the arresting officers, a prudent person would have
22 concluded that there was a fair probability that the defendant had committed a crime.”
23 *United States v. Buckner* 179 F.3d 834, 837 (9th Cir. 1999). Probable cause requires
24 only “reasonably trustworthy information.” *Saucier v. Katz* 533 U.S. 194, 207
25 (2001).

26 Plaintiff’s allegations and admissions in his complaint clearly demonstrate that
27 he was detained and/or arrested for his conduct which interfered with the
28 investigation of a Sheriff’s deputy involving the driver’s license of his wife, Anny.

1 Plaintiff should not be permitted to bring a lawsuit for Section 1983 violations based
2 on such conclusory allegations that he was “battered,” “shackled,” or “kidnapped.”
3 For example, in a lawsuit involving a Section 1983 violation for an unreasonable
4 search without probable cause, generalized and vague allegations were held
5 insufficient to state a valid claim. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992).
6 Similarly, a long and rambling set of grievances is not sufficient to state a claim under
7 Section 1983. *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996).

8 On the other hand, plaintiff’s admissions and allegations in the first amended
9 complaint actually amount to “reasonably trustworthy information” supporting a
10 violation of law by plaintiff, establishing probable cause for the deputies’ alleged
11 conduct. Under California Penal Code section 836.5, a public officer may arrest a
12 person without a warrant whenever the officer has reasonable cause to believe that
13 the person to be arrested has committed a misdemeanor in the presence of the officer
14 that is a violation of a statute that the officer has the duty to enforce.

15 Accordingly, Plaintiff has failed to state a claim upon which relief can be
16 granted because his allegations and admissions clearly support probable cause to
17 detain or arrest plaintiff for at least a violation of California Penal Code section 148.
18 That section provides, in pertinent part, as follows:

19 “(a)(1) Every person who wilfully resists, delays or
20 obstructs any public officer, peace officer, ... in the
21 discharge or attempt to discharge any duty of his or her
22 office or employment, when no other punishment is
23 prescribed, shall be punished by a fine not exceeding one
24 thousand dollars (\$1,000), or by imprisonment in a county
25 jail not to exceed one year, or by both that fine and
26 imprisonment.”

27 ///

28 ///

1 Plaintiff's allegations and admissions clearly demonstrate that he intentionally
2 and repeatedly interfered with the Orange County Sheriff's deputies during the
3 performance of their duties.

4 **IV. PLAINTIFF HAS SPECIFICALLY FAILED TO STATE**
5 **A CLAIM UPON WHICH RELIEF CAN BE GRANTED**
6 **AGAINST THE COUNTY OF ORANGE**

7 In order to successfully maintain an action against the COUNTY OF ORANGE
8 for civil rights violations under 42 U.S.C. section 1983, it is necessary to establish
9 that the alleged conduct occurred in execution of a government's policy or custom
10 promulgated by its lawmakers or those whose acts may fairly be said to represent
11 official policy. *Monell v. New York City Department of Social Services, supra*, 436
12 U.S. at 691-693. A Court of Appeal has explained liability under *Monell*, in pertinent
13 part, as follows:

14 "[A] municipality is liable under 42 U.S.C. §1983 only
15 when execution of its policy or custom causes a plaintiff to
16 suffer constitutional injury. Since *Monell*, the Court has
17 continued to explore the contours of municipal liability
18 under §1983. In a case involving a police shooting
19 allegedly caused by inadequate training, the Court
20 determined that 'proof of a single incident of
21 unconstitutional activity is not sufficient to impose liability
22 under *Monell*, unless proof of the incident includes proof
23 that it was caused by existing, unconstitutional municipal
24 policy, which policy can be attributed to a municipal
25 policymaker.'"

26 *Parker v. District of Columbia* 850 F.2d 708, 711-712 (D.C. Cir. 1988), citing
27 *Oklahoma City v. Tuttle* 471 U.S. 808, 823-824 (1985).

28 ///

1 Accordingly, municipalities are only liable under 42 U.S.C. section 1983 in
2 limited factual circumstances. In this matter, plaintiff does not allege facts against
3 the COUNTY OF ORANGE to support its alleged liability as a governmental entity
4 to plaintiff regarding the alleged incident. Accordingly, plaintiff's complaint fails to
5 state a claim upon which relief can be granted against the COUNTY OF ORANGE.

6 **V. CONCLUSION**

7 Defendants COUNTY OF ORANGE, GLEN LOCKERBY, HARMON
8 WARD, BRIAN BRUNS and PHIL MEJIA, request the Court to grant this motion
9 to dismiss because plaintiff has failed to state a claim upon which relief can be
10 granted under 43 U.S.C. section 1983. The allegations do not support *Monell*
11 liability against the COUNTY OF ORANGE and, separately, there is no foundational
12 constitutional violation initially alleged against Orange County Sheriff's deputies
13 because the allegations clearly support an arrest or detention for probable cause.

14 DATED: November 7, 2012

15 MICHAELIS, MONTANARI & JOHNSON

16
17 By: 

18 WESLEY S. WENIG
19 Attorneys for Defendants,
20 COUNTY OF ORANGE,
21 GLEN LOCKERBY,
22 HARMON WARD,
23 BRIAN BRUNS and
24 PHIL MEJIA
25
26
27
28

NA12517\p\d\Motion to Dismiss.1.wpd

